In The Matter of the Arbitration - between - UNITED TRANSPORTATION UNION - and - CSX TRANSPORTATION, INC.	Pursuant To Article 1, Section 11 of NEW YORK DOCK CONDITIONS OPINION AND AWARD

Arbitration Committee

Employee Member: Mitchell W. Currie
Carrier Member: N. B. Grissom
Neutral Member: David P. Twomey

The above entitled matter came to be heard before the Arbitration Committee on July 14, 1997, and the proceedings were declared closed as of that date.

QUESTIONS AT ISSUE:

Since the parties could not agree on questions at issue, they agreed that each party would submit their own question(s) for adjudication in this matter.

The Employees' Questions at Issue are:

1. Does the 60-day time limit set forth in Article General 4 apply to the payment and/or declination of New York Dock protection claims?

2. If Question No. 2 is answered in the affirmative, is the Carrier estopped from recouping any overpayments? If not, what basis is the Carrier permitted to effect a recovery of the overpayments?

The Carrier's Questions at Issue are:

1. Does the Carrier have the right to recoup erroneous New York Dock guarantee payments from trainmen K. P. Bass and L. W. Matthews which they received more than 60 days ago?

2. Does the 60-day time limits rule set forth in the schedule agreement apply to the payment and/or decline of I.C.C. type protective benefits?

FINDINGS:

I.

Application of The Sixty Day Time Limits Set Forth In Article General 4 of the Schedule Agreement

In October 1994, the Carrier requested the Organization to eliminate Portsmouth Yard without the necessity of conducting the 10-day time study required by Article V, Section 1 of the June 25, 1964 National Agreement; and on October 31, 1994, the Carrier and the Organization entered into an agreement to eliminate Portsmouth as a yard engine point and, at the same time, provide New York Dock protective benefits for adversely affected employees. While it is clear that the time limit period in the Schedule Agreement applied to the protection agreement in effect

between the BN and UTU in 1983 as determined in Award No. 1 of SBA No. 918; and a Schedule Agreement rule was applied in an Amtrak C-1 arbitration dealing with a unilateral mistake made by the Carrier, which rule specifically limited the time period of recovery of overpayments, the instant case deals with New York Dock conditions, and it is settled that Schedule Agreement time limit rules are not applicable under New York Dock conditions. See for example BRC and BN, Arbitration under New York Dock Section 11 (Marx) and TCU and UP under New York Dock Section 11 (LaRocco).

II.

Recoupment Period Limitation

At the time of the implementation of the October 31, 1994 Protective Agreement, Yard Foreman Bass was working at Portsmouth Yard. After his job was abolished, he exercised his seniority to the yard at Rocky Mount, North Carolina, displacing Yard Foreman L. W. Matthews. Both Messrs. Bass and Matthews were certified as being adversely affected by the transaction and were furnished monthly Test Period Averages (TPAs) and test period hours. Both filed monthly guarantee claims in the manner prescribed by the Carrier, and when completing each claim screen, each used "constructive code PV in CD field" as directed by the Senior Director Labor-Relations. Nearly two years later in November of 1996 the Carrier discovered that overpayments were made to Messrs. Bass and Matthews over most of the two year period, with Mr. Bass being overpaid $6,377.20 (See Carrier Exhibit D-2) and Mr. Matthews being overpaid $1,718.63 (Carrier Exhibit D-3).

Under the Carrier's automated guarantee handling system, guarantee claims are electronically put into the system by the employees, and then held in suspense until they are researched and approved for payment. In this case the Carrier states that the Constructive Code ("PV") that was used to identify the transaction was incorrectly programmed causing the guarantee claims to be automatically paid without being reviewed by an examiner.

This case is not of a unilateral (one-sided) mista :e, as was before Professor Rohman in the UP and UTU Amtrak Appendix C-1 case, referred to pi eviously, where the Carrier itself made the mistake in calculating a retroactive wage increase for affected displaced employees. In the instant case the two employees appear to have made math errors in computing their guarantee entitlements as well as made mistakes in claim guarantee payments when their earnings exceeded their guarantee entitlements and average hours. The employees however had no knowledge that mistakes existed in their monthly cl.ims. Mr. Bass went so far as asking permission to tape the meeting held just prior to the closing of the Portsmouth yard where management officials explained the employee protection claim process to them; and he states that he made his claims based on the information received. Nevertheless both he and Mr. Matthews made errors in their claims over the two year period.

We have considered all of the arbitration awards cited by the parties including those dealing with carrier's right to recoup money from employees in clear situations of overpayments to those dealing with the requirement that the carriers must establish reasonable procedures for the detection and correction of payroll errors within a reasonable time after an occurrence. The Carrier asserts that because it took two years to discover the overpayments does not indicate that the Carrier itself was negligent, or that the two employees should be unjustly enriched at the expense of the Carrier. In fact the constructive code used by the Carrier to identify the transaction was incorrectly programmed. No Carrier payroll employee reviewed the initial claims of the two employees to see if the employees correctly understood their entitlements under New York Dock Conditions. Indeed not a single claim was researched and validated by a payroll expert for nearly two years. Such is simply not right, and the assertion of a computer glitch cannot relieve the Carrier of its responsibility to establish reasonable procedures (including backup procedures) for the timely detection and correction of payroll errors.

Where there is no specifically agreed upon time limit with respect to the matters now before this board, the board must apply a reasonable time limitation period in the context of the

narrow facts and circumstances of this particular record. We find that the time period for recoupment shall be limited to the net overpayments paid to Mr. Bass and Mr. Matthews in the first six claims actually submitted by Mr. Bass and the first six claims actually submitted by Mr. Matthews. Recoupment of overpayments for periods after these periods of time is barred as unreasonable. Recoupment shall be deducted from guarantee payments owed by the Carrier to Mr. Bass and Mr. Matthews.

III.

Answers to Questions at Issue

A. Employees' Question 1 is answered "No".

B. Employees' Question 2: The answer is contained in part II of the Findings of this Board dealing with the Recoupment Period Limitation.

C. Carrier's Question 1: The answer is as set forth in part II of the Findings of this Board dealing with the Recoupment Period Limitation.

D. Carrier's Question 2 is answered as per part I of the Findings of this Board.

Mitchell W. Currie
Employee Member

N. B. Grissom
Carrier Member

David P. Twomey
Neutral Member

Dated: September 5, 1997